



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

DEC 21 2011

Colonel John R. Boulé II
District Engineer, New York District
U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
New York, New York 10278-0090

Dear Colonel Boulé:

This is in further regard to Public Notice number NAN-2011-01158-WCA dated October 14, 2011, concerning an application by Metro Central, LLC c/o Triple Five Development for a Department of the Army permit to construct a commercial amusement park and water park on lands owned by the New Jersey Sports and Exposition Authority in the Borough of East Rutherford, Bergen County, New Jersey. We have reviewed the information provided in the application submitted to the Corps and we still have concerns regarding the sufficiency of the alternatives analysis and the lack of a mitigation plan. We therefore continue to object to the proposed action.

The applicant proposes to discharge fill material into approximately 5.47 acres of waters of the United States, including wetlands, to facilitate the construction of the two commercial parks. This property comprises 21.75 acres and includes approximately 7.36 acres of jurisdictional tidal and non-tidal Waters of the United States. In addition, work is proposed on an adjacent site for drainage improvements involving an existing 96-inch culvert beneath the New Jersey Turnpike. These facilities would adjoin an entertainment and retail complex formerly known as Xanadu that was authorized under Department of the Army Permit 2003-00549. Triple Five has an agreement to acquire the existing complex and rename it American Dream Meadowlands.

After evaluating the information available for this project, the U.S. Environmental Protection Agency (EPA) cannot concur that the project complies with the Clean Water Act Section 404(b)(1) Guidelines. These Guidelines state that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic environment." In the case of non-water dependent activities, such as the proposed entertainment parks, such alternatives "are presumed to be available, unless clearly demonstrated otherwise". The alternatives analysis submitted to the Corps states the purpose of the project is to fulfill the New Jersey Sports and Exposition Authority's need to redevelop the Arena Site. However, the proposed expansion area was not identified as part of the Arena Site at the time the original permit for Xanadu was granted. Furthermore, such a project purpose framed closely in terms of the Sports and Exposition Authority's economic needs is overly broad and may preclude an accurate search for less damaging alternatives. We acknowledge that the originally permitted facility failed to open; however, a project purpose based simply on the need to continue to develop additional property is inconsistent with the objectives of the 404(b)(1) guidelines since it could justify any additional expansions. We therefore request additional alternative information that focuses more clearly on the basic purpose of this project, the construction of indoor water and amusement parks. We accept that the Sports and Exhibition Authority has economic objectives, but these goals in themselves cannot justify the permanent and irretrievable commitment of the subject wetlands resources.

The application discusses on-site alternatives, including the redevelopment of the Izod Center arena, and areas immediately to the north of the Izod Center, but these sites were rejected because Triple Five does not control them and because "patrons could directly access the two parks without first circulating through the existing Entertainment Retail Complex." Further documentation is needed on why these alternatives were rejected. Conceivably the New Jersey Sports and Exposition Authority, which owns all of these properties, could make these areas available if they so chose. We also presume that the patron entry points of these layouts can be located in such a way that the flow of patrons could still pass through the Entertainment Retail Complex in a desirable manner.

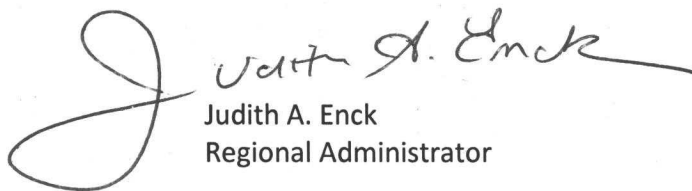
In addition, in the event the project moves forward, we are concerned that there may be additional needed road improvements that could further encroach into aquatic areas. We request that the applicant carefully analyze whether the current road network, designed for the smaller Xanadu project, will meet this larger project's projected traffic demands.

Finally, the Public Notice indicates that a final compensatory mitigation program for the project will be performed within the same watershed and in a manner consistent with the 2008 Final Rule for Compensatory Mitigation for Losses of Aquatic Resources (40 CFR Part 230). However, 40 CFR 230.94(b)(1) states that the public notice must contain a description of the proposed mitigation plan for unavoidable impacts. Neither the Public Notice issued for this project nor the application submitted to the Corps on October 11, 2011, contains details about the nature, location, and scope of the mitigation plan. Therefore, we cannot concur that sufficient mitigation will be put forth to compensate for unavoidable impacts.

In summary, we have insufficient documentation to conclude that the project complies with the Clean Water Act Section 404(b)(1) guidelines. It is also EPA's opinion that the Hackensack Meadowlands is an Aquatic Resource of National Importance as defined in Part IV, Paragraph 1, of the Clean Water Act Section 404(q) Memorandum of Agreement signed by our two agencies on August 11, 1992. Pursuant to Part IV, Paragraph 3(b), of the Memorandum of Agreement, we believe that the proposed project will result in substantial and unacceptable impacts to this aquatic resource of national importance. EPA therefore objects to Department of the Army authorization for this project, as proposed. We look forward for further coordination on the issues raised by this application.

If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff contact Mr. Mario Del Vicario, Chief of EPA's Watershed Management Branch, at (212) 637-3779.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith A. Enck". The signature is stylized with a large, looping initial "J".

Judith A. Enck
Regional Administrator

cc: U.S. Fish and Wildlife Service, Pleasantville, NJ
National Marine Fisheries Service, Sandy Hook, NJ
New Jersey Department of Environmental Protection, Trenton, NJ